

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

24606

**FILE:** B-208252

**DATE:** March 23, 1983

**MATTER OF:** Delta Elevator Service Corporation

**DIGEST:**

1. Protester's assertion that awardee will not be able to comply with a solicitation requirement that it perform 30 percent of the contract with its own on-site forces challenges the contracting officer's affirmative determination of responsibility, which GAO will not review in the absence of a showing of fraud or an allegation that definitive responsibility criteria were not applied.
2. Solicitation requirement that contractor perform with its own on-site forces construction work equivalent to not less than 30 percent of the contract price states how the work is to be accomplished and is not a definitive responsibility criterion.
3. Where there is no requirement for a bidder to identify and obtain approval of the contracting officer of proposed subcontractors prior to award of prime contract, approval of subcontractors after award involves a matter of contract administration, which GAO does not review.

Delta Elevator Service Corporation protests the award of a contract by the Veterans Administration Medical Center, Providence, Rhode Island, to Piti Building Company, Inc. under invitation for bids No. 650-80-109. The contract was for the replacement of six elevators and one dumbwaiter in Building No. 1 at the Medical Center. The protester contends that the awardee is incapable of complying with a solicitation requirement that the prime contractor perform not less than 30 percent of the work with his own forces. The protester also questions the technical qualifications of a proposed subcontractor. For the reasons stated below the protest is dismissed.

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The solicitation stated that the successful contractor would be required to perform construction work equivalent to not less than 30 percent of the contract price with its own on-site forces. The solicitation also required the contractor, after award, to submit with its schedule of costs (required for progress payments) a statement designating the portions of the contract to be performed with its own forces, and provided that the contractor's failure to satisfy the percentage-of-work requirement would result in a reduction in the contract price according to a stipulated formula. Piti did not take exception to these solicitation requirements in its bid.

In essence, the protester's contention challenges the contracting officer's affirmative determination that Piti is a responsible contractor, *i.e.*, that it has the ability to perform all the contract requirements within the limitations prescribed by the solicitation. Arlington Electrical Construction Co., B-203429, July 2, 1981, 81-2 CPD 5. This Office does not review affirmative determinations of responsibility unless there is either a showing of fraud on the part of procurement officials or an allegation that definitive responsibility criteria were not applied. Mica Inc., B-208848.5, September 23, 1982, 82-2 CPD 264. There has been no showing of fraud in this case. Further, a solicitation provision, like the one here, which requires a contractor to perform a certain percentage of work with its own forces does not constitute a definitive responsibility criterion. Whitco Industrial Corp., B-202810, August 11, 1981, 81-2 CPD 120. Such a provision simply states how the work is to be accomplished after award and differs from a requirement that is a precondition of award.<sup>1</sup> Contra Costa Electric, Inc., B-190916, April 5, 1978, 78-1 CPD 268. Since the protester has not alleged that the procuring official acted fraudulently and as definitive responsibility criteria are not involved here, we will not consider this aspect of the protest.

<sup>1</sup>Such a requirement would be that a bidder submit evidence of having specific experience in a particular area.

Similarly, we will not consider the allegation concerning the qualifications of the awardee's proposed elevator subcontractor. There was no requirement that proposed subcontractors be identified and approved prior to award. Rather, the solicitation provided that the contracting officer must approve the products or services of proposed manufacturers, suppliers or installers of the elevators, and that the approval would be contingent upon the prime contractor's certification that such proposed subcontractors met requirements with respect to experience, facilities and personnel. Such approval by the contracting officer under these circumstances is a matter of contract administration, Challenge Equipment Corporation, B-193511, December 29, 1978, 78-2 CPD 442, which our Office does not review. Tenavision, Inc., B-208857, September 21, 1982, 82-2 CPD 256. Our Bid Protest Procedures, 4 C.F.R. Part 21 (1982), are reserved for considering whether an award, or proposed award, of a contract complies with statutory, regulatory and other legal requirements, and not with how contracting officers administer contracts that have been awarded.

The protest is dismissed.

*Harry R. Van Cleve*  
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